

No. 20-11692

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

United States of America,

Plaintiff-Appellee,

v.

Reality Leigh Winner

Defendant-Appellant.

APPEAL

From the United States District Court for the Southern District of Georgia
(Case 1:17-CR-00034-JRH-BKE)
Hon. J. Randal Hall,
UNITED STATES DISTRICT JUDGE

APPELLANT'S SUPPLEMENTAL BRIEF

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Certificate of Interested Persons and Corporate Disclosure Statement

United States of America v. Reality Leigh Winner, Appeal No. 20-11692

Counsel for Appellant Reality Leigh Winner states that the following is a full and complete list of all entities and persons having an interest in the outcome of this appeal:

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No publicly traded company or corporation has an interest in the outcome of this case or appeal.

/s/Joe D. Whitley

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Introduction

Appellant Reality Leigh Winner (“Reality” or “Appellant”) files this Supplemental Brief to alert the Court to the exponentially growing danger for her at her Bureau of Prisons (“BOP”) facility, FMC Carswell, located in Fort Worth, Texas. The Government previously advised the Court, a mere two weeks ago, that zero inmates had been infected with the novel coronavirus, COVID-19, at FMC Carswell. Those circumstances have drastically changed. In the last two weeks, the BOP reports that 134 inmates and 3 staff members have tested positive for COVID-19 at FMC Carswell, numbers which appear to spike daily—from 0 on June 29th, to 45 infected inmates on July 6th, to 68 inmates infected on July 9th, to 77 inmates infected on July 10th, to 113 infected inmates on July 11th, to 127 inmates infected as of July 12th, and now, to 134 infected inmates as of the date of this filing. Setting aside the legal errors the district court committed, which were briefed in Reality’s initial Brief and her Reply Brief, Reality’s burden in the district court was to demonstrate that her circumstances—including, for instance, her underlying health issues coupled with her environment at FMC Carswell—meet the required test of being “extraordinary and compelling,” justifying her release. The exponentially growing harm at FMC Carswell is relevant to that inquiry and, combined with the other evidence in this record, justifies her release.

Argument

In its Appellee Brief, the Government made the point that, as of late June—just two weeks ago—“zero inmates and one staff member” had tested positive for COVID-19.¹ Presumably, the Government was attempting to show that Reality did not face the danger she reported to both this Court and the district court in connection with her Motion for Compassionate Release.² On Reply, Reality pointed out that the publicly-reported infections in FMC Carswell—as with almost everywhere else—were spiking.³ As of July 6, 2020, FMC Carswell was publicly reporting that 45 of its inmates had tested positive for the novel coronavirus—a 4,500% increase.⁴

Now, merely a week later, the *infections have nearly tripled*, as FMC Carswell is publicly reporting 134 inmate infections and 3 staff infections.⁵ Indeed, it has taken *over a week* for Reality’s counsel to be able to schedule a phone call with her to obtain more insights into her current circumstances—an illustration of BOP’s inadequate handling of the COVID-19 pandemic as a whole. It is apparent, in view

¹ Gov’t’s Br. at 38, n.14.

² Indeed, as previously briefed, the district court was so unmoved by the danger Reality and other inmates faced that it denied her request for expedited treatment, holding that Reality’s predicament was no different than that of Court staff. *See* Reality’s Br. at 3-4.

³ *See* Reality’s Reply Br. at 32, n.69.

⁴ *See* Reality’s Reply Br. at 3, 21-22.

⁵ *See* COVID-19 Update, Federal Bureau of Prisons, FMC Carswell (Fort Worth, TX), available at <https://www.bop.gov/coronavirus/index.jsp> (last visited July 13, 2020). As noted in Reality’s Reply Brief, this Court may take judicial notice of the information contained on the BOP’s website. Reality’s Reply Br. at 22, n.69.

of the spiking numbers at this facility, that her health is, as argued in the district court and in this Court, in serious jeopardy.⁶ Counsel fears what information will be learned that are not reflected in the BOP’s numbers alone when he does have the opportunity to speak to Reality.

The third issue presented in Reality’s Brief is whether the district court erred in holding that Reality did not meet her burden to demonstrate “extraordinary and compelling” circumstances justifying her release under 18 U.S.C. § 3582 or, alternatively, whether the district court should have ordered an evidentiary hearing.⁷ Given that Reality’s environment—her circumstances at FMC Carswell and the rapidly-spiking cases in that facility—fluence this issue, Appellant wanted to alert this Court’s attention to these rapidly-developing facts. BOP appears to be updating the statistics for FMC Carswell on a regular basis on its COVID-19 webpage located at <https://www.bop.gov/coronavirus/index.jsp>.

⁶ See Reality’s Br. at 3 (noting that Reality faces “life-threatening disease” and that “time [is] of the essence”).

⁷ See *id.* at 21-26.

Conclusion

For the reasons set forth in her initial Appellant's Brief, filed on June 15, 2020, as well as those discussed in her Reply Brief, filed July 6, 2020, and in this Supplement, Appellant respectfully prays that this Court REVERSE the district court's order on each of the enumerations of error set forth in her original brief, and ORDER a modification of her sentence under 18 U.S.C. § 3582(c)(1)(A)(i) before she suffers a sentence more serious than that which she originally agreed to or, alternatively, REMAND for further proceedings and application of the correct legal framework by the district court, to include a potential evidentiary hearing, or for such additional relief as is warranted.

Certificate of Compliance With Type-Volume Limit, Typeface Requirements, and Type-Style Requirements

This document complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B)(i). This document contains 800 words, excluding those parts exempt by Eleventh Circuit Rule 26.1-3(c) and Fed. R. App. P. 32(f). This brief complies with the typeface and type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this motion has been prepared in a proportionately spaced typeface using Microsoft Word 2010 in Times New Roman 14-point font.

Respectfully submitted,

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Certificate of Service

I hereby certify that the foregoing has been served upon the following counsel of record by first class mail and/or by electronically filing the foregoing with the Court on this the 13th day of July, 2020.

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